

John P. Forest, II, VSB# 33089
Allred Bacon Halfhill & Young, P.C.
11350 Random Hills Rd., Suite 700
Fairfax, VA 22030
(703) 352-1300
Proposed Counsel for the Debtor

THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

_____)	
IN RE SHAWERMA EXPRESS, INC.)	
)	Docket Number 16-10936
Debtor)	Chapter 11
_____)	

APPLICATION FOR RULE TO SHOW CAUSE

Pursuant to 11 U.S.C. §§ 105 and 362 and Fed. R. Bankr. P. 9014 and 9020, the Debtor requests that this Court enter an rule to show cause against Johnie Kattan and as grounds states:

JURISDICTION

1. The Debtor filed a petition for relief on March 15, 2016. *See* Docket Entry No. 1.
2. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1334.
3. This is Application presents a core matter pursuant to 28 U.S.C. § 157.

PRE-PETITION MATTERS

4. Prior to the filing of the petition for relief, Mr. Kattan:¹
 - (a) wrongfully excluded management from the leased premises;
 - (b) withdrawn all funds from and closed all bank accounts;
 - (c) removed the POS terminal to preclude the Debtor from undertaking any credit card transactions;
 - (d) closed the business of the Debtor;

¹ The Debtor reserves the right, following further investigation, and in such pleading as may be appropriate, to contend that Mr. Kattan took other actions to the detriment of the Debtor.

(e) failed to pay rent for at least one month if not two months for the premises leased by the Debtor;

(f) refused to pay suppliers for the Debtor causing the suppliers to either cancel or restrict delivery of inventory to the Debtor; and

(g) cancelled all the insurance coverage for the Debtor.²

POST PETITION MATTERS

5. Subsequent to the filing of the petition for relief, Mr. Kattan was advised of the filing of the petition for relief.

6. Subsequent to the filing of the petition for relief, Dawoud Murad, the Debtor Designee, was served with a Preliminary Protective Order [a copy of which is attached as Exhibit 1] (the “PPO”). The PPO was issued in a civil proceeding styled as *Johnie Kattan v. Dawoud Murad*; Fairfax County General District Court Docket No. GV-16003795-00 (the “Fairfax County Proceedings”).

7. The effect of the PPO is exclude the Debtor Designee from operating and managing the affairs of the Debtor.

8. Subsequent to the filing of the petition for relief, Johni Kattan has attempted to operate the business of the Debtor on a cash basis.

9. Upon information and belief, Mr. Kattan is simply exhausting the pre-petition inventory and is not ordering replacement inventory.

ARGUMENT

10. Upon the filing of a petition for relief pursuant to 11 U.S.C. § 301, the provisions of the automatic stay embodied in 11 U.S.C. § 362(a) go into effect.

11. Mr. Kattan has violated the automatic stay by:

² Immediately prior to filing the petition for relief, Dawoud Murad, applying his own funds, obtained insurance coverage for the Debtor.

(a) obtaining possession of and exercising control over property of the estate [the business inventory] in violation of 11 U.S.C. § 362(a)(3); and

(b) exercising control of property of the estate [the proceeds of the sales of the business inventory] in violation of 11 U.S.C. § 362(a)(3).

12. The actions of Mr. Kattan also impair the ability of the Debtor to:

(a) prepare for the initial debtor interview [scheduled for March 30, 2016 at 2:00 p.m.] as required by 11 U.S.C. § 1116(2) in that the Debtor cannot obtain the information required to be provided to the Office of the U.S. Trustee prior to the initial debtor interview;

(b) prepare and file its schedules and statement of financial affairs;

(c) prepare and file its basic monthly operating reports; and

(d) allow the U.S. Trustee to inspect the Debtors business premises, books, and records as required by 11 U.S.C. § 1116(7) .

13. Pursuant to 11 U.S.C. § 105, this Court has the authority to enter orders necessary to carry out the provisions of [11 U.S.C. §§ 101, *et seq.*].

CONCLUSION

14. The Debtor requests that this Court enter an order finding that Mr. Kattan is in contempt of this Court and prohibiting Mr. Kattan from being present in or around the Premises until the Fairfax County Proceedings are terminated, as to allow the Debtor Designee to perform his duties.

15. This relief will allow the Debtor the ability to begin the process of reorganizing and will not to any degree impair the protections that Mr. Kattan might otherwise be entitled to receive pursuant to the PPO.

16. The Debtor does not request that this Court adjudicate any of the issues of fact or questions of law raised by the PPO. The Debtor intends that any such adjudication of the issues raised by the PPO be left to the appropriate non-bankruptcy court.

REQUEST FOR RELIEF

Wherefore, the Debtor requests that this Court:

- (a) enter an order finding that Mr. Kattan is in contempt of this Court;
- (b) enter an order prohibiting Mr. Kattan from being present in or around the Premises until the Fairfax County Proceedings can be resolved and until any such order can be modified;
- (c) awarding the Debtor its costs and attorney fees incurred in prosecuting this Application; and
- (d) granting the Debtor such other and further relief as may be appropriate.

Respectfully submitted by:

/s/ John P. Forest, II

John P. Forest, II, VSB# 33089
Allred Bacon Halfhill & Young, P.C.
11350 Random Hills Road, Suite 700
Fairfax, Virginia 22030
Telephone: (703) 352-1300
Facsimile: (703) 352-1301
Email: jforest@abhylaw.com
Proposed Counsel for the Debtor

CERTIFICATE OF SERVICE

I hereby certify that on March 17, 2016, that a true copy of the foregoing APPLICATION FOR RULE TO SHOW CAUSE was served either by ECF transmission or first class mail, postage prepaid, upon: (1) the Office of the United States Trustee, 115 S. Union St., 2nd Fl., Alexandria, VA 22314 and (2) all creditors at their address on the attached Mailing Matrix [Exhibit 2]; but upon Johnie Kattan by personal delivery to the address listed on the attached mailing Matrix.

/s/ John P. Forest, II

John P. Forest, II